

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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State Bar of Nevada,

Plaintiff,

V.

Edward Clint Allen,

Defendant.

Case No. 2:22-cv-01014-RFB-DJA

ORDER

I. INTRODUCTION

Before the Court for consideration is the following: Defendant Edward Clint Allen's Motion to Dismiss (ECF No. 7), Plaintiff State Bar of Nevada's Motion to Remand to State Court (ECF No. 13), the Report and Recommendation (ECF No. 17) of the Honorable Judge Daniel J. Albregts, United States Magistrate Judge, and Defendant's Motion to Extend Time (ECF No. 22).

For the foregoing reasons, the Magistrate Judge's Report and Recommendation is accepted and adopted in full, Plaintiff's motion to remand is granted, and Defendant's motions are denied as moot.

II. DISCUSSION

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). A party may file specific written objections to the findings and recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Local Rule IB 3–2(a). When written objections have been filed, the district court is required to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Local

1 Rule IB 3-2(b).

2 In this case, the Magistrate Judge's Report and Recommendation recommends granting
 3 Plaintiff's motion to remand and dismissing this action for lack of jurisdiction. The Magistrate
 4 Judge concluded that the Court lacks jurisdiction to hear this case because it does not arise under
 5 federal law. This is because Plaintiff's Complaint has only one cause of action for violation of
 6 Nevada Revised Statute 7.825(1)(a), and that cause of action arises under Nevada law and not
 7 federal law.¹ The Magistrate Judge also rejected Defendant's argument that Plaintiff has "artfully
 8 pleaded" a federal claim as a state claim, as the alleged conduct Defendant is accused of is not
 9 conduct governed exclusively by federal law. This is because, the Report and Recommendation
 10 notes, regulating the conduct of the attorneys it licenses—and prohibiting the practice of law by
 11 those it does not—is the purview of state courts.

12 Defendant filed an objection to the Magistrate Judge's Report and Recommendation on
 13 October 25, 2022. ECF No. 18. Defendant objects to the Report and Recommendation because
 14 Defendant has an imminently forthcoming countercomplaint, asserting that the Court has
 15 jurisdiction over this matter, and seeking declaratory and injunctive relief against Plaintiff. Also,
 16 Defendant contends that Plaintiff's attempt to enforce Nevada law in its Complaint against him for
 17 injunctive relief violates his constitutional rights.

18 The Court agrees with the Magistrate Judge's recommendation. First, Defendant's
 19 Objection is not responsive to the grounds upon which the Magistrate Judge recommends granting
 20 Plaintiff's motion to remand and dismissing this action for lack of jurisdiction. See 28 U.S.C. §
 21 1447(c); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987); Sullivan v. First Affiliate
 22 Securities, Inc., 813 F.2d 1368, 1371-72 (9th Cir. 1987); Gadda v. Ashcroft, 377 F.3d 934, 944
 23 (9th Cir. 2004). Second, under the well-pleaded complaint rule, a defendant's claims or defenses
 24 may not serve as a basis for removal. See Takeda v. Nw. Nat'l Life Ins. Co., 765 F.2d 815, 821-22
 25 (9th Cir. 1985). As such, potential counterclaims are not considered in evaluating whether a federal
 26 question appears on the face of a plaintiff's complaint. Vaden v. Discover Bank, 556 U.S. 49, 60

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 28 ¹ The Complaint only seeks declaratory and injunctive relief, pursuant to Nevada Revised Statute § 7.825,
 against Defendant to prohibit him from the unauthorized practice of law in the state of Nevada.

1 (2009) (explaining that federal question jurisdiction cannot “rest upon an actual or anticipated
2 counterclaim”). The Court has reviewed the record in this case and finds that the rest of
3 Defendant’s objections to the Magistrate Judge’s recommendation lack merit.

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5 **III. CONCLUSION**

6 **IT IS THEREFORE ORDERED** that the Report and Recommendation (ECF No. 17) is
7 ACCEPTED and ADOPTED in full.

8 **IT IS FURTHER ORDERED** that Defendant Edward Clint Allen’s Motion to Dismiss
9 (ECF No. 7) is DENIED as moot.

10 **IT IS FURTHER ORDERED** that Plaintiff State Bar of Nevada’s Motion to Remand to
11 State Court (ECF No. 13) is GRANTED.

12 **IT IS FURTHER ORDERED** that Defendant Edward Clint Allen’s Motion to Extend
13 Time (ECF No. 22) is DENIED as moot.

14 The Clerk of the Court is instructed to close this case.

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17 **DATED:** January 19, 2023

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE